CHINA INSURANCE CO. LTD. v. LOONG MOH CO. LTD.

[F.C. (Thomson L.P., Chua & Winslow JJ.)
February 26, 1964]

[Singapore — F.C. Civil Appeal No. 78 of 1963]

Insurance — Marine Insurance — Casualty — Suit by assignees of policy against underwriters.

Practice and Procedure — Commercial list — Interlocutory application for ship's papers order under English R.S.C., O. 31 r. 12A (now O. 24 r. 9) — Whether court should grant such an order — R.S.C. 1934 O. XXA.

Precedent — Matter decided by S. S. Court of Appeal — Whether binding on Federal Court.

The appellants were underwriters and the respondents were assignees of a policy of insurance which it was said to be relevant to a marine casualty alleged to have occurred in the Straits of Malacca. The matter was transferred to the Commercial List in the course of the proceedings and the appellants asked for a ship's papers order provided for by O. 31 r. 12A of the English R.S.C. (now replaced by O. 24 r. 9). The application was refused and against that refusal the appellants appealed.

Held: the appeal should be dismissed because the point was concluded by the decision of the Straits Settlements Court of Appeal in *K. E. Mohamed Sultan Maricar* v. *Prudential Assurance Co. Ltd.*(2) (without deciding whether that case was rightly or wrongly decided) where it was held that such an order could not be made in the then Straits Settlements.

Observations on Order XXA.

Cases referred to:—

(1) *Leon & Ors.* v. *Casey* [1932] 2 K.B. 576, 587.

(2) *K. E. Mohamed Sultan Maricar* v. *Prudential Assurance Co. Ltd.* [1941] M.L.J. 20; [1941] M.L.J. Rep. 18.

FEDERAL COURT.

J. E. Lloyd for the appellants.

Goh Joon Seng for the respondents.

Thomson L.P. (delivering oral judgment): This is an appeal from a decision of Mr. Justice Tan Ah Tah in an interlocutory matter arising in the course of marine insurance proceedings.

The defendants in the proceedings are underwriters and they are being sued by the assignee of a policy of insurance which is said to be relevant to a marine casualty which was alleged to have occurred somewhere in the Straits of Malacca. In the course of the proceedings the matter was transferred to the Commercial List, so called, and then the defendants asked for what is compendiously, though perhaps not very accurately, described as a ship's papers order, that is the type of order that is provided for by Order 31 rule 12A of the English Supreme Court Rules (now replaced by Order 24 rule 9).

The application was refused and against that refusal the applicants, the defendants in the original proceedings, have now appealed.

Before expressing my views on the appeal I would quote the following observations by Greer L.J. in the case of *Leon & ors.* v. *Casey*: (1)

> "....no more unpleasant duty has to be performed by a judge than that of giving, in accordance with binding authority, a decision which upon the facts before him he considers both unreasonable and unjust."

I am about to subject myself to that extremely unpleasant ordeal by saying that in my view the point is concluded by the decision of the Straits Settlements Court of Appeal in the case of *K. E. Mohamed Sultan Maricar* v. *Prudential Assurance Co. Ltd.*(2) where it was held that such an order could not be made in the then Straits Settlements. As to whether that case was rightly or wrongly decided I express no opinion; that point will have to be decided, if at all, elsewhere. But it is a decision which affects a type of litigation that is common here. It has now stood for over 23 years. There can be little doubt that during these 23 years it has frequently been considered by practitioners as a guide in the course of litigation. In my view it would be wrong for us not to accept it.

I have not overlooked the argument that some difference may have been made by Order XXA setting up the so-called Commercial List. With regard to that argument my own view, shortly, is that Order XXA did not confer any new procedural rights upon litigants. What it did do was to make provision regarding the exercise of existing procedural rights with a view to securing expedition and efficiency in dealing with the type of litigation with which the Order was concerned.

I would, therefore, although with considerable reluctance, dismiss the appeal with costs and order payment out to the respondents of so much of the deposit in Court as will cover their taxed costs.

Chua and **Winslow JJ.** concurred.

Appeal dismissed.

Solicitors: *Drew & Napier*; *M. B. Brash.*

YONG MOI & ANOR. v. THE ASIA INSURANCE CO. LTD.

[F.C. (Thomson L.P., Chua & Winslow JJ.)
April 6, 1964]

[Singapore — Federal Court Civil Appeal No. 57 of 1963]

Insurance — Deceased passenger of car — Car driven by friend of deceased — Car borrowed by deceased — Judgment against driver of car for damages — Judgment not satisfied — Claim against insurers — Insurers denying liability because car driven without owner's permission — Whether there is implied consent.

Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, s. 8(1).

Bailment — Distinction between gratuitous bailment and bailment for valuable consideration.

In 1957 one Ho was the owner of an Austin motorcar in respect of which there was in existence an insurance policy issued by the respondents. On October